

## REMARKS

Claims 1-10, 12, 15, 20, 27-32, 34, 36 and 38 are currently amended. Claim 17 is canceled. Entry of this amendment is appropriate because it places the case in better condition for appeal. Reconsideration of the application in view of the above amendments and the following remarks is requested.

### **I. The Rejection of Claims 1-20 and 27-39 under 35 U.S.C. 112**

Claims 1-20 and 27-39 stand rejected as failing to comply with the written description requirement with respect to "substantially un-agglomerated". Reconsideration is urged in light of the amendments above removing this language.

### **II: The Rejection of Claims 1-20 and 27-39 as Anticipated/Obvious.**

Claims 1-20 and 27-39 stand rejected under 35 U.S.C. 102(b) as being anticipated by or obvious under 35 U.S.C. 103(a) by Guraya (U.S. Patent No. 6,737,099 herein after referred to simply as "Guraya I"). Independent claims 1, 31, 34, 36 and 38 are currently amended to require that the starting material be water soluble. This limitation is not new and is based on canceled claim 17. Claim 1, as currently amended, requires, *inter alia*, water soluble particulate starting material. In other words, the starting material is soluble in water. Conversely, Guraya relates to flour from milled seed of cereals. Flour is not soluble in water. For example, Guraya claims and refers to "aqueous slurry of an amylaceous flour". In Guraya, a slurry is formed because the flour does not go into solutions and is not "water soluble". Accordingly, independent claims 1, 31, 34, 36 and 38 referring to "water soluble" starting materials are not anticipated by Guraya. Reconsideration is urged.

Applicants note that Guraya does not make claims 1, 31, 34, 36 and 38 obvious. Initially, as explained above, Guraya fails to show each and every element of the present disclosure. Further any attempt by the Examiner to argue that Guraya makes independent claims 1, 31, 34, 36 and 38 obvious would erroneously retrace the path of the inventor with hindsight --discounting the number of complexities of the alternatives in order to conclude that the specifically claimed method was obvious. This reasoning is always inappropriate for an obviousness test based on the language of Title 35 that requires the analysis to examine "the subject matter as a whole" to ascertain if it "would have been obvious at the time the invention was made." 35 U.S.C. § 103(a).

Even applying a non-rigid TSM analysis, one of ordinary skill in the art would not be motivated by Guraya to modify the flour of Guraya and change it to a water soluble component and mix it with a liquid as in the present disclosure. None of the independent claims are obvious. Reconsideration is urged.

**III: The Second Rejection of Claims 1-20 and 27-39 as Anticipated by or Obvious**

Claims 1-20 and 27-39 stand rejected under 35 U.S.C. 102(a) as being anticipated by or obvious under 35 U.S.C. 103(a) by Guraya II (WO 02/078457 herein after referred to simply as "Guraya II"). Independent claims 1, 31, 34, 36 and 38 are currently amended to require that the starting material be water soluble. For example, Claim 1 as amended, requires, *inter alia*, water soluble particulate starting material. In other words, the starting material is soluble in water. Conversely, Guraya II relates to flour from milled seed of cereals. Flour is not soluble in water. For example, Guraya II claims and refers to "an aqueous slurry of an amylaceous flour". In Guraya II, a slurry is formed because the flour does not go into solutions and is not "water soluble". Accordingly, independent claims 1, 31, 34, 36 and 38 referring to "water soluble" starting materials are not anticipated by Guraya II. Reconsideration is urged.

Applicants note that Guraya II does not make claims 1, 31, 34, 36 and 38 obvious. Initially, as explained above, Guraya II fails to show each and every element of the present disclosure. Further any attempt by the Examiner to later argue that Guraya II makes independent claims 1, 31, 34, 36 and 38 obvious would erroneously retrace the path of the inventor with hindsight --discounting the number of complexities of the alternatives in order to conclude that the specifically claimed method was obvious. This reasoning is always inappropriate for an obviousness test based on the language of Title 35 that requires the analysis to examine "the subject matter as a whole" to ascertain if it "would have been obvious at the time the invention was made." 35 U.S.C. § 103(a).

Even applying a non-rigid TSM analysis, one of ordinary skill in the art would not be motivated by Guraya II to modify the flour of Guraya II and change it to a water soluble component and mix it with a liquid as in the present disclosure. None of the independent claims are obvious. Reconsideration is urged.

**IV: The Rejection of Claims 1-4, 10, 13-16, 19-20 and 27-39 as obvious**

Claims 1-4, 10, 13-16, 19-20 and 27-39 stand rejected as obvious under 35 U.S.C. 103(a) by Kodokian (US Patent No. 5,928,577 herein after referred to simply as "Kodokian"). However, Kodokian does not disclose or suggest a water soluble starting material.

Applicants note that claim 17 relating to starting material that is water soluble is not subject to this rejection. All independent claims are currently amended to include the "water soluble" limitation. Accordingly, none of the independent claims are obvious in light of Kodokian. Reconsideration is urged.

**V. Conclusion**

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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